**S.B.Civil Writ Petition NO.63/2005**

**Kanti Chand**

**vs**

**Raksha Mittal**

**DATE OF ORDER** : - 6.1.2005

**HON'BLE MR. PRAKASH TATIA,J.**

Mr. Sumeet Mehta, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 2nd Sept., 2004 by which some conditions have been imposed against the petitioner while staying the execution of the decree. It appears that the first appellate court directed the petitioner to deposit Rs.23,800/- under protest and further directed petitioner to deposit rest of the arrears of the rent within one month. The petitioner was further directed to furnish an undertaking that he will hand over possession of the suit shop to the plaintiff in case his appeal will be dismissed. The petitioner was further directed to furnish security of Rs. 1 lac.

No doubt, the conditions imposed against the petitioner for

furnishing undertaking of delivery of possession by the petitioner to the plaintiff-respondent cannot be justified by any stretch of imagination in view of the fact that petitioner himself is not seeking stay against execution of the decree so far as it relates to the possession on the ground that petitioner is not in possession of the suit property. When petitioner is not seeking injunction order against the eviction decree then there was no reason for court to pass the order of furnishing undertaking that petitioner will hand over the possession of the suit shop to the plaintiff-respondent. By this, virtually, the court has granted the relief of injunction against the decree for possession, despite the fact that petitioner himself is not seeking the injunction against the decree for possession.

Be that it may, since the injunction application has not been placed on record by the petitioner and petitioner's counsel submits that petitioner is not in possession of the property and further submits that petitioner is not seeking injunction against the decree for possession, therefore, I do not find any reason to set aside the order dated 2nd Sept., 2004 because of the reason that this is the choice of the petitioner to avail the benefit of the order dated 2nd Sept., 2004 or he may not take benefit. So far as decree for the arrears of rent is concerned, there was no reason for stay of that part of the decree.

In view of the above, I do not find any reason to interfere in the impugned order date 2nd Sept., 2004. Hence, the writ petition of the petitioner is dismissed.

**(Prakash Tatia), J.**

c.p.goyal/-